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BY ECF

The Honorable Richard M. Gergel
United States District Court
For the District of South Carolina
P.O. Box 835
Charleston, South Carolina 29402

Re: *Tyco Fire Products LP v. AIU Ins. Co., et al., No. 2:23-cv-02384*
(D.S.C.)

Dear Judge Gergel:

This letter is being submitted on behalf of Plaintiff Tyco Fire Products (“Tyco”) and the Defendant AIG Insurers. As set forth below, we request that the Court enter the enclosed proposed order that will help coordinate discovery in this action with discovery in the parallel Wisconsin Action.

Paragraph 21 of the Confidentiality and Protective Order (ECF 189) in this action states: “[d]ocuments that were produced or filed in the MDL that are responsive to discovery requests in this action may be produced in this action without seeking leave in the MDL or consent of the producing parties and without need to provide further Bates stamp numbers.” In addition, Paragraph 10 of Discovery Case Management Order No. 1 entered on November 17, 2023, orders the Parties to “use best efforts” and to “cooperate with one another to seek to ensure that all discovery in this action is cross-designated for use in the lawsuit captioned *Century Indemnity Company v. Tyco Fire Products LP*, Case No. 2022-CV-000283 (Wis. Cir. Ct. Marinette Cnty.) (the “Wisconsin Action”).” ECF 190 at ¶ 10. Discovery Case Management Order No. 1 also orders that, “[w]ith respect to documents produced or filed in the MDL Lawsuit that are responsive to discovery requests in this action, the parties shall work together to obtain any necessary court orders or consents from parties to the MDL ... prior to cross designating such materials for use in

the Wisconsin Action.” *Id.* In accord with and pursuant to Paragraph 10 of Discovery Case Management Order No. 1, counsel for Tyco engaged in discussions with the Plaintiffs’ Executive Committee (“PEC”) seeking to permit the cross designation in the Wisconsin Action of documents and other discovery produced or filed in the MDL. As a result of such discussions, the PEC has no objection to the order requested herein.

Consistent with the foregoing, the AIG Insurers, on behalf of the AIG Insurers and Tyco, write to request that this Court enter the order enclosed herewith, which would permit Tyco to cross-designate all documents produced or that will be produced in this case from the AFFF MDL litigation for use in the Wisconsin Action.

This is a matter of considerable urgency, as the Parties are now scheduling depositions, which will start soon. The AIG Insurers and Tyco wish to coordinate the depositions in both actions to maximize efficiency. Absent cross-designation, counsel for the Wisconsin-only insurers (that is, insurers not parties to this coverage case) will be unable to participate in certain depositions in this action which may involve documents from the AFFF MDL produced in this coverage action but not in the Wisconsin Action. If that were the case, certain witnesses may be deposed twice—once by the insurers in this action who have access to all potentially relevant documents (including those produced in the MDL which Tyco has produced in this action), and a second time in the Wisconsin Action by insurers who do not have access to the same documents as the insurers that are parties to this case. That would be highly inefficient and inconsistent with this Court’s stated goals as set forth in Paragraph 10 of this Court’s Discovery Case Management Order No. 1.

For the reasons set forth herein, Tyco and the AIG Insurers respectfully request that the Court enter the enclosed proposed form of Order, which would permit Tyco to cross-designate documents that it has produced or will produce in this action (including documents that were originally produced to Tyco by other parties in the MDL) for use in the Wisconsin Action, thus permitting the insurers in both actions to attend and participate in all depositions.

Tyco and the AIG Insurers appreciate the Court’s attention to this matter and are available to discuss this issue further with the Court.

Respectfully,

/s/ Adam J. Kaiser
ADAM J. KAISER

cc: All Counsel of Record (by ECF)